Book Review: Publicity Rights and Image: Exploitation and Legal Control by Gillian Black

Deborah Schander

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Keeping Up with New Legal Titles*

Compiled by Creighton J. Miller, Jr.** and Annmarie Zell***

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Reviewed by Donna M. Fisher

¶1 When critic and author Mary McCarthy appeared on television’s *Dick Cavett Show* in early 1980, she seized upon Cavett’s invitation to comment on “overpraised writers” (p.41), famously saying of author and playwright Lillian Hellman that “every word she writes is a lie, including ‘and’ and ‘the’” (id.). Hellman responded with a suit for libel—a suit that provides the central focus for Alan Ackerman’s new book, *Just Words: Lillian Hellman, Mary McCarthy, and the Failure of Public Conversation in America.* Ackerman—an associate professor of English at the University of Toronto, the author of two other scholarly books,¹ and the editor of the academic journal *Modern Drama*—posits that Hellman’s lawsuit “arose not from rational deliberation but from an excess of passion, which is only to say that it was typical of American public expression, illustrating the degree to which intemperate, highly personal, and potentially defamatory language is woven into our discourse” (p.36). Certainly, emotion seems to have been the primary motivation for the lawsuit, but this represents a rather narrow premise to support an entire book. Thankfully, Ackerman’s work segues from this basic theme into entertaining and informative discussions that should appeal to McCarthy and Hellman devotees alike and to readers interested more generally in First Amendment issues.

¶2 By 1980, both Hellman and McCarthy enjoyed well-established literary reputations. McCarthy, author of the 1963 autobiographical novel *The Group,* was seen as a stickler for the facts, willing even to expose her own failings in the pursuit of accuracy. On the other hand, Hellman was an embellisher extraordinaire, to put it politely, known to have fabricated the portrayal of herself as an anti-Nazi smuggler in her own ostensibly autobiographical story, *Julia.*² The two writers were sepa-

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rated by politics, as well: McCarthy was “a liberal anticommunist” (p.11), Hellman a Soviet sympathizer once targeted by the House Un-American Activities Committee. Thus, though McCarthy and Hellman had no direct personal relationship to speak of, no one should have been surprised to learn that the two were decidedly less than fond of one another. Hellman’s lawsuit highlighted these philosophical and ideological differences, setting the stage for a momentous legal clash between two strong personalities.

¶3 Ackerman’s book tells the story of this clash and positions it within a broader social context. Chapter 1, “Libel and Life-Writing,” presents the background to Hellman’s lawsuit and addresses concepts important to the American law of libel, such as the difference between facts and opinion and public versus private personae. In chapter 2, “Language Lessons,” Ackerman describes Hellman’s and McCarthy’s formative years, supplementing his discussion with an extended digression on the history of teaching Latin and the classics in American schools. Chapter 3, “Words of Love,” expands Ackerman’s discussion of the First Amendment to touch upon such topics as censorship, privacy rights, and women’s reproductive freedom. Chapter 4, “Choice Words and Political Dramas,” explores the ideological divide between Hellman and McCarthy, with particular reference to their stances on communism. In chapter 5, “Criticism versus Libel,” Ackerman examines other questionable allegations of defamation, both real and fictional, concluding with contemporary controversies over ambiguous truth-telling, such as James Frey’s dubious 2003 memoir, A Million Little Pieces.

¶4 Understanding Ackerman’s sympathies for Lillian Hellman, a proven liar, is difficult, especially as the most obvious possible motives for her lawsuit include petty rivalry and an overblown concern for her own personal and literary legacies. However, a defamation lawsuit ends when its plaintiff dies. Thus, Hellman’s suit came to an unsatisfactory conclusion upon her death in 1984, and readers can only speculate how Ackerman’s book might have differed had the case been resolved by the courts. Regardless, Just Words serves as a worthy exploration of the conflicts created when issues of free speech, publicity, and privacy intersect. The book will make a welcome addition to both general academic and law school libraries.


Reviewed by Deborah Schander

¶5 When Michael Douglas asked Catherine Zeta Jones to marry him, the two actors probably did not expect their wedding to be anything other than a joyful occasion. But when a freelance photographer snuck into the ceremony, their happy day also became the focal point for a landmark U.K. privacy case.3 This decision, together with other cases from various countries, forms a body of law that protects rights in publicity. Many scholarly works have addressed this area of law, but most of them are narrow in focus, investigating either the commercial implications of publicity or the theoretical basis for publicity rights. However, with Publicity Rights

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and Image: Exploitation and Legal Control, Gillian Black combines these approaches to explore how the two issues intersect in various Western jurisdictions.

¶6 As Black points out, trying to compare publicity practice across a number of very different jurisdictions is no easy task. U.S. theories on the subject have been evolving since the late nineteenth century, while the U.K.’s treatment is not quite fifteen years old. Tossing in laws from Germany, France, Canada, and elsewhere adds further complexity. Nor are current practices always tied solely to jurisdictional lines. Yet Publicity Rights and Image tries to cover each of the many variations in one slim volume composed of three basic parts: the first presents an introduction to the general legal theories involved; the second explores why this area of law needs further development; and the third focuses on the future of publicity. This third and final part, in particular, supports one of the book’s principal goals, “to provide a comprehensive picture of what publicity rights should look like, rather than what they do look like in any one jurisdiction” (p.196).

¶7 Black certainly provides a strong introduction to this area of law, but her choices regarding scope of coverage cause some confusion. In the acknowledgments, she asserts that the text—a revised and expanded version of her Ph.D. thesis on Scottish publicity law—is now “a wider, a-jurisdictional review” (p.vii), but Publicity Rights and Image remains decidedly U.K. focused. Applicable laws from France, Germany, and the United States receive reasonable review, while Canada and a few other European countries are briefly mentioned. Ultimately, however, readers can only guess why these countries were selected and others left out. Also unexplained is the book’s appendix, a single photographic reproduction of a historical advertisement, which is barely referenced in a book that contains no other historical images or visual examples.

¶8 Despite such oddities, the remainder of the book’s content is quite useful. Publicity Rights and Image condenses a complicated area of law into an easy-to-understand primer and presents a strong argument that the topic needs further attention from scholars and policy makers—after all, publicity law impacts privacy, property rights, the economy, and more. Supplementing its cogent analysis, the book includes comprehensive tables of cases and legislation, an extensive bibliography, and a detailed index with strong coverage of alternative terms.

¶9 Black, a solicitor and lecturer in commercial law at the University of Edinburgh School of Law, has made a valuable contribution to the study of publicity law and rights. Her book’s subject matter is probably too narrowly focused for use in law school survey courses, but Publicity Rights and Image could prove particularly effective in upper-level seminar classes. It is recommended for selection by all academic law libraries and by law firm libraries supporting attorneys who practice in the area.


Reviewed by Barbara Glennan

¶10 In Learning Outside the Box: A Handbook for Law Students Who Learn Differently, author Leah M. Christensen presents law school learning strategies tai-
lored for students who “tend[] to think ‘outside the box’” (p.xi). For Christensen, a
professor at Thomas Jefferson School of Law, this group includes a wide range of
law students, from those with “diagnosed or undiagnosed learning disabilit[ies]” to
those who “process information differently than the norm” or simply “need a new
approach to law school” (id.). Christensen offers her book to each of these groups as “a learning guide” (p.xii) with empirically grounded strategies derived from her
own research and the work of other authors on legal pedagogy, and she asserts that
there are “statistical correlations between [the] learning strategies and law school
GPAs” (id.).

¶11 Christensen’s text is divided into two basic parts: the first designed to intro-
duce students to law school in general, the second to present strategies for master-
ing critical law school activities. Early chapters in part 1 describe the unique
qualities and challenges found in law school and explain how students can deter-
mine their personal learning styles and adapt them for success in law study. A sig-
nificant portion of the remainder of this part is dedicated to introducing learning
strategies appropriate for basic tasks like reading legal materials, briefing cases, and
preparing for class. One chapter describes in detail the process involved in obtain-
ing accommodations for learning disabilities and lists the accommodations that
students can expect to receive in a law school environment.

¶12 Part 1 ends with a chapter that presents transcripts of interviews conducted
with three students—two with disability diagnoses (ADD and ADHD) and one
self-described as a “different learner.” While one of these students praises her
school’s willingness to work with her to accommodate her disability, another
reports she was ostracized by classmates who learned of her accommodations.
Information like this, even when it is not particularly encouraging, may give stu-
dent readers who have had their own negative encounters something they can
relate to, something to demonstrate that their experience is not unique. Additionally,
each of the interviewed students was asked: “What do you wish you had known
before law school?” (p.106) and “What advice would you give to other law students
who have . . . disabilities (or who simply think outside of the box)?” (id.). The
answers to these questions may help motivate readers to take a proactive approach
to managing their disabilities or learning styles, perhaps by applying some of the
techniques described in the book.

¶13 In part 2, Christensen details specific strategies that apply to writing,
researching, outlining, and test taking in law school. The chapter on writing pro-
vides separate formulas for law students to follow when crafting legal arguments
and when completing legal writing assignments, complete with annotated exam-
pies demonstrating use of the formulas. This chapter also explains the importance
of clear and recognizable organization and highlights specific writing challenges
that may cause problems for “different learners.” Subsequent chapters cover both
legal research and outlining in a similarly concise and easy-to-follow fashion.
Christensen ends her book by focusing on exams. First, she describes how to
approach essay exams, covering effective issue spotting and proper legal analysis
and offering examples of both well-written and not-so-well-written exam answers.
She also lays out the purposes underlying these exams and explains the qualities
that professors look for when grading essays. The final chapter addresses multiple-
choice exams, describing the kinds of multiple-choice questions a law student might encounter and listing general strategies relevant to multiple-choice exams and specific strategies appropriate for each type of question.

¶14 Learning Outside the Box provides a concise map to the tricky terrain of law school success while simultaneously offering practical and emotional support to readers with nontraditional learning styles. The book will benefit both prospective law students and those current students who see a “mismatch between how law professors teach . . . and the way in which [the students] learn” (p.19). These readers may find it most useful simply to skim the text initially and then reread pertinent sections later as the content becomes applicable to their studies. In addition to students, law school faculty members, administrators, and staff responsible for counseling law students should also become familiar with this text. The book is recommended for all law school libraries.


Reviewed by Melanie Oberlin

¶15 Carbon Trading Law and Practice, from U.S. environmental law attorney Scott Deatherage, is a timely work on the emerging use of carbon markets as a mechanism for limiting greenhouse gas (GHG) emissions. Although the 2009 Copenhagen climate talks did not produce a binding international agreement on GHG emissions, and the U.S. Congress has to date failed to enact national cap-and-trade legislation, prospects remain strong for the future regulation of GHGs and for “the use of market-based systems as a means of regulating emissions” (p.xxvi). Indeed, markets for trading carbon offsets already exist, most notably in the European Union but also in various U.S. states and regions and elsewhere in the world. Literature on the law governing these markets is badly needed, and Deatherage’s book helps to fill this gap.

¶16 Deatherage’s knowledge and experience are evident throughout this wide-ranging work, as is his enthusiasm for market-based approaches to pollution reduction. The book opens with a primer on climate science and on the international consensus regarding global climate change; early chapters also address the basics of emissions trading and of carbon cap-and-trade regimes. The book then proceeds to more advanced topics: the international law on GHG emissions; the regulation of the EU’s emissions trading market; and the various legal regimes governing other, smaller carbon markets, including those in the United States. For each of the specific markets he discusses, Deatherage outlines the precise emissions regulated and the emission sources covered; identifies the regulating agencies; lists the carbon cap; explains the procedures for permitting, trading, banking, and borrowing credits and the rules on offsets; and describes the relative competitiveness of the market. Deatherage then examines U.S. law in greater depth, and the final third of the text discusses the practical aspects of developing and operating projects that produce carbon credits, including topics such as cost-benefit analysis and project incentives, the purchase and sale of carbon credits, and emissions accounting. In this last part
of the book, Deatherage’s personal experience with carbon projects adds particular value to the analysis.

¶17 Deatherage divides his examination of the developing U.S. law on GHG emissions into four chapters that separately address state laws, the courts, the EPA, and Congress. The chapter on the EPA is particularly timely because 2011 marked both the implementation date for new GHG emissions reporting requirements and the beginning of the phase-in process for regulations directly limiting GHG emissions. These EPA rules are traditional command-and-control regulations, not the market-based, cap-and-trade approach favored by industry. However, Deatherage’s chapter on Congress analyzes in detail a 2010 bill that would have implemented cap-and-trade. Though the bill failed to pass, future legislation will likely retain many aspects of this proposal, and Deatherage’s analysis should remain valuable in the years to come. His chapter on the courts is similarly helpful, providing brief overviews of the high-profile cases that are “play[ing] a significant role in the evolution of climate change law” (p.100).

¶18 Deatherage does not presume that readers have extensive background knowledge of environmental regulation, climate change, GHGs, or emissions trading concepts. Accordingly, the material in Carbon Trading Law and Practice is laid out with care and presented in a step-by-step process through clearly labeled chapters, headings, and subheadings. A detailed table of contents, an index, and a list of acronyms and abbreviations support the text. The book also has its faults, however, and future editions would benefit from better editing and from additional bibliographic tools, specifically a glossary; a bibliography; a more comprehensive list of acronyms (the existing list is incomplete); and tables of cases, statutes, and treaties.

¶19 Other existing titles—even other Oxford University Press titles also address the regulation of carbon markets, but Carbon Trading Law and Practice is more up-to-date and includes more practical advice than these earlier works. Libraries can expect the publication of additional books and, eventually, a standard treatise on this topic, but for now, Deatherage’s work will prove useful for students and scholars, carbon trading advocates, and others working with developing carbon markets. As such, Carbon Trading Law and Practice is an essential purchase for those academic law libraries that collect in the areas of energy or environmental law and for any firm or business engaged in or seriously contemplating engaging in the purchase and sale of carbon offsets. Because of the book’s high cost and because the law in the area is so unsettled, the work is not recommended for other libraries.

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7. See, e.g., LEGAL ASPECTS OF CARBON TRADING (David Freestone & Charlotte Streck eds., 2009).

**Reviewed by Nick Sexton**

¶20 If Clarence Darrow is known at all by the general public today, it is probably because of the character portrayed by Spencer Tracy in *Inherit the Wind*, the 1960 film about the Scopes trial. Tracy’s character was actually named Henry Drummond, but anyone familiar with what is sometimes called the Monkey Trial knows that Tracy was playing Darrow. Central both to the film and to Darrow’s continuing legacy is the infamous 1925 trial itself, in which Darrow defended twenty-four-year-old high school science teacher John Scopes against a charge of violating a Tennessee law that prohibited the teaching of human evolution in the public schools. Despite common misperceptions, the resolution of the case was not a clear win for Darrow. As John A. Farrell describes it in his new biography, *Clarence Darrow: Attorney for the Damned*, both sides asked the jury “to return a guilty verdict, so that the case could move on to higher courts” (p.397). When it got to the Tennessee Supreme Court, however, the justices overturned the conviction on a technicality. Was this a win for Darrow? Not quite. He and the American Civil Liberties Union wanted to argue the unconstitutionality of the Tennessee law in the U.S. Supreme Court, but the Tennessee Supreme Court, having witnessed the embarrassing circus that engulfed the town of Dayton during the original trial, gave Darrow nothing to appeal.

¶21 Farrell’s book rightly spends one of its longest chapters on the Scopes trial. But the case, though it revived Darrow’s reputation in the eyes of the public, was heard closer to the end of his career than to the beginning, and it is better known for courtroom theater—namely, Darrow’s gambit in putting opposing counsel William Jennings Bryan on the stand and their ensuing verbal jousting over the issue of the Bible’s infallibility—than for reasons having anything much to do with law. Darrow’s reputation as a defense attorney who took on unpopular clients and causes was established long before Scopes, a point Farrell demonstrates by examining several of Darrow’s other cases.

¶22 Farrell presents a comprehensive portrait of Clarence Darrow throughout the book. Born in 1857, the fifth of eight children, Darrow attended Allegheny College and the University of Michigan’s Law Department, but did not graduate from either school. He then studied law at a Youngstown, Ohio, firm and practiced in the state before moving to Chicago, where he first made his name as a corporate attorney and later as the “the attorney for the damned” (p.6), an expression coined by Darrow’s journalist friend Lincoln Steffens. Darrow’s first marriage, in 1880, to Jessie Ohl produced his only offspring, Paul, to whom Darrow remained close throughout life. His second marriage in 1903 to Ruby Hamerstrom confounded Darrow’s friends, who considered Ruby “his intellectual inferior” (p.124), but the marriage endured until his death in 1938, despite Darrow’s various infidelities.
“The damned,” Darrow’s clients, ranged from minors who were charged with murder—he considered it a victory when he won them life sentences instead of death—to what most people, inside the legal profession or out, would consider lost causes: Patrick Prendergast, who shot and killed the mayor of Chicago and became one of the few clients Darrow could not save from execution; socialist union leader Eugene V. Debs; various other union officials, whose cases made Darrow the chief representative of America’s growing labor movement; wives who killed their husbands; husbands who killed their wives; and Nathan Leopold and Richard Loeb, two rich, well-educated teenagers who murdered fourteen-year-old Bobby Franks. One of Darrow’s saddest cases, and a heartrending reminder of America’s racial history, was that of Dr. Ossian Sweet and his family, African Americans who moved into a white Detroit neighborhood and found themselves facing murder charges when their armed defense of the family home against a stone-throwing mob left one of their assailants dead. The first trial, overseen by future Supreme Court Justice Frank Murphy, resulted in a mistrial. The second, once again featuring Darrow and Judge Murphy, ended with a verdict of not guilty—a bittersweet victory for the family, as Dr. Sweet’s wife likely contracted tuberculosis while incarcerated. She later died from the disease, as did their baby girl.

Farrell’s work is a complete, modern biography of a preeminent figure in twentieth-century jurisprudence, one who played significant roles in the leading cases of his day. As such it should be owned by both public libraries and law libraries. The book is neither sharply critical nor a hagiography; it does a good job telling the stories of Darrow’s cases and giving readers the information needed to understand the circumstances of his times. Farrell draws Darrow with a fair hand, laying out the facts and letting readers reach their own conclusions about the man’s personal and professional life. Extensive citations are presented in numbered endnotes at the back of the book. Because individual notes often include stacked references that apply to several paragraphs of text, matching a quote with its source can be difficult; in some instances, endnote comments do not seem to relate to the paragraphs to which they are tagged. These issues are disconcerting, but hardly fatal to the book’s purpose. Overall, Clarence Darrow: Attorney for the Damned is a readable, entertaining, and informative volume.


Well-timed to coincide with the start of commemorations for the 150th anniversary of the U.S. Civil War, Anthony J. Gaughan’s The Last Battle of the Civil War: United States Versus Lee, 1861–1883 is a legal history of the northern Virginia estate owned by Mary Custis Lee, wife of Robert E. Lee, that is known today as Arlington National Cemetery. The Custis family bought the property in 1778, and the Arlington estate passed through the family, reaching Mary Lee in 1857. She held it under a life estate, to revert upon her death to her eldest son, George Washington Custis Lee. In 1861, with the outbreak of hostilities, the Lee family withdrew from Arlington for the more protective surroundings of their second home at Ravensworth
in Fairfax County. Arlington was quickly seized by federal troops in order to deny its high ground to Confederate forces, who might otherwise have used it as a base from which to attack Washington, D.C. The property remained under federal control throughout the war, and the government eventually claimed permanent ownership under title acquired at a tax sale in 1864. The postwar legal battle over the legitimacy of this sale forms the heart of Gaughan’s book.

¶26 Though his book’s subtitle focuses on the U.S. Supreme Court’s decision in United States v. Lee, Gaughan charts an interesting and informative path to this destination. He explores well beyond the litigation itself to examine the social and political dynamics connecting Arlington, the Lee family, and various federal wartime measures related to Confederate property. In a highly readable account, Gaughan carefully explains each of the contexts in which the Lee case arose: first, the historical significance of the property, from its connections with George Washington to the establishment of Washington, D.C., and Arlington’s geographical dominance over the District; second, the saga of congressional efforts to raise funds for the war effort and punish secessionists; third, the legal consequences entailed by court review of wartime legislation; and fourth, Lee’s role as a stalking horse for a strategy intended to rein in the federal courts’ powers of judicial review.

¶27 Gaughan diligently recounts the struggles of the Lee family to gain compensation for their lost estate in the decades following the war, presenting their efforts as a kind of litmus test for measuring the acidity of North-South relations. Shortly after the death of Robert E. Lee in 1870, Senator Thomas McCreaery sought to establish an investigation into the status of Arlington, with the express hope of helping Mary Lee achieve redress. The joint resolution he proposed went down in a blaze of criticism and a vote of 54–4 against. The North still wanted to punish former Confederate leaders, especially those the northern public blamed for betraying oaths of loyalty to the Constitution. By the time of the Supreme Court’s 1882 decision in Lee, Congress’s stance had softened, and the Senate Judiciary Committee managed to negotiate the terms of a just compensation with the Lee family. Corresponding to a growing rapprochement between the North and South, Lee had come to be viewed in a warmer light as a man of strong principle.

¶28 Gaughan’s own background gives a unique spin to his tale. He is an attorney with a J.D. from Harvard and a historian with a Ph.D. from the University of Wisconsin–Madison. He is also a decorated military officer who completed assignments as a staff officer in Iraq. He currently works in private practice in Madison, Wisconsin, and serves in the Navy Reserves. Though this is his first book, he has already moved on to his next, about the trial of the Watergate burglars.

¶29 The Last Battle of the Civil War nicely highlights the role that Arlington has played in our national history. As a recovering history graduate student, this reviewer, for one, appreciated the work Gaughan undertook in researching and drafting the book. Evidence of his efforts is listed in the acknowledgments and is visible in the quality of his footnotes and his bibliography. He went to the original

sources, not to reprints and secondary materials. While the book will certainly be welcomed by legal historians and students of the Civil War, Gaughan’s easy style may also appeal to casual readers with an interest in Lee, Arlington, or the Civil War. Published by a respectable university press, the book is a good addition for academic law libraries and for general academic libraries that serve students of history.


Reviewed by Mark W. Podvia

¶30 With its Collegiate Gothic design, the University of Michigan’s Law Quadrangle is among the most impressive and beloved structures on any American university campus. Completed between 1924 and 1933, the buildings (along with a sizable sum in support of legal research) were the gift of New York lawyer William W. Cook. In Giving It All Away: The Story of William W. Cook and His Michigan Law Quadrangle, Margaret A. Leary, the recently retired director of the University of Michigan Law Library, describes Cook’s life and his role as the University of Michigan Law School’s greatest benefactor.

¶31 William Cook was born in 1858, in Hillsdale, Michigan. He received his undergraduate degree from the University of Michigan in 1880, and an LL.B. from Michigan’s Law Department in 1882. Moving to New York City, he represented the Mackay Company—Western Union’s major competitor—and invested heavily in the telegraph and cable industry, investments that produced a sizable fortune. Highly regarded in his field, Cook also authored several important works on trusts and on corporation law. By 1910, he had recognized the need for private support of public education and decided to leave his fortune to his alma mater.

¶32 Cook was often contradictory in his actions. A believer in the education of women, he built a women’s dormitory for the university, yet he opposed the choice of a woman to manage the quadrangle’s first building, the Lawyers Club. He gave his personal fortune to support Michigan’s law school, yet he never visited the campus after graduating and declined all offers of honorary degrees. Cook was an anti-Semite and a believer in Anglo-Saxon supremacy—views regrettably common among those of his generation—but he never attempted to force his views on the law school.

¶33 Leary’s interest in Cook as a subject dates to her first few months working at Michigan, when she realized that “nobody knew anything about [him].” Brilliantly researched, her work extends beyond Cook’s life to describe the era in which he lived. The “Great Blizzard” that struck New York City in 1888, the architecture of Cook’s Manhattan town house and Port Chester estate, his efforts to woo Ida Olmstead, his cottage at Blooming Grove Hunting and Fishing Club, his opposition to federal efforts to nationalize the telegraph and cable industry—each is

described in depth and detail. Leary’s central account, however, is the story behind the building of the Law Quadrangle, a tale that is, to a great extent, one of good fortune. If Cook’s nine-year marriage had produced children, his fortune might have gone to them, not to the law school. If the university leadership had not included men of foresight such as presidents Harry Hutchins and Marion Burton, less tactful advances might have driven Cook to donate elsewhere. Had architect Philip Sawyer not survived Cook, the Gothic design of the law quad might have been jeopardized. Had Cook not died when he did, the effects of the Great Depression might have rendered his donation insufficient to complete the project. Had the university not ultimately been victorious in protracted litigation over the Cook estate, funds might not have been adequate to construct the buildings that Cook envisioned.

¶34 Leary ends Giving It All Away—a book that will interest educators and historians alike and one that belongs in every academic law library—by describing what ultimately became of the major players in her story. She covers not only the key individuals, but also the fate of buildings and institutions, like the Mackay Company, the Lawyers Club, and Cook’s various homes. The final product is an eminently readable and, for the most part, lavishly illustrated book, though Giving It All Away would have profited from more photographs of the law quadrangle, allowing those who have not visited the University of Michigan’s Ann Arbor campus to better appreciate Cook’s magnificent gift.


Reviewed by June Kim

¶35 For those who have only a passing familiarity with the Religious Society of Friends (known colloquially as the Quakers), a book about the group’s views on the law, lawyering, and conflict resolution might seem sedate. The Quakers are famous for pacifism and for devotion to truth and integrity—characteristics that do not exactly suggest conflict or high drama. What distinguishes the Quakers from other pacifist groups, however, is their choice not to withdraw from society but to assert their religious principles within the broader world. Because of this involvement, relations between the Quakers and the English and American legal establishments have often been fraught with tension. Friends at the Bar: A Quaker View of Law, Conflict Resolution, and Legal Reform, authored by Quaker lawyer Nancy Black Sagafi-nejad, presents an overview of this often contentious history and explores the potential for using traditional Quaker principles and dispute resolution practices as a springboard for modern legal reform.

¶36 Friends at the Bar is clearly laid out and straightforward in structure, with six chapters arranged in two basic parts. In part 1, Sagafi-nejad ably introduces the Friends, their beliefs, and their history. Chapter 1 describes the “primary Quaker testimonies [of] harmony or peace, community, simplicity, and equality with truth-telling infusing all” (p.12). As Sagafi-nejad notes, “These testimonies together with the belief that there is that of God, the Light or Inward Spirit in every person form
the wellspring of Quaker activism” (p.13). Chapter 2 addresses the early history of the Society in England, where Quaker beliefs often placed the Friends at loggerheads with legal authorities. Because of their interpretation of scripture and their efforts “to tell the truth at all times” (p.30), Quakers refused to swear oaths. As one might expect, this position made it impossible for English Quakers to hold magisterial office, work as legal counsel, prosecute claims against others, or defend themselves against criminal prosecutions. Chapter 3 follows the Friends to America and particularly to Pennsylvania, the “holy experiment” (p.47), in the 1680s. Because William Penn was able to establish laws amenable to his fellow Quakers, the group’s experience with the institutions of law in Pennsylvania was considerably better than it was in England or in the other American colonies, “where officials deported, imprisoned, maimed, and even killed” Quakers (p.64).

¶37 With part 2 of the book, Sagafi-nejad’s focus shifts to the modern day. Chapter 4 addresses the experience of Quakers as parties in court, and its examination of landmark Supreme Court cases through the prism of the Quaker testimonies proves quite illuminating. Readers find, for instance, that the black armbands worn by the Quaker students involved in Tinker v. Des Moines Independent Community School District14 represent a “silent witness of the peace testimony” (p.76). Similarly, in Hirabayashi v. United States15 Quaker Gordon Kiyoshi Hirabayashi’s violation of a curfew on Japanese Americans invokes the testimony of equality—“the belief that all persons are interconnected by God’s light and by each other as members of the world community” (p.79).

¶38 Sagafi-nejad submits that her “main task” in Friends at the Bar is to convey the results of a 1991 survey she conducted to assess “the views of 100 Quaker lawyers on practicing law as they also practice their faith” (p.1), and she presents this information in chapter 5. The survey results provide a wealth of demographic data on Quaker lawyers, detailing, for instance, the environments in which they worked (most commonly solo practices or small firms) and the relative popularity of various practice areas (litigation was least popular). More notably, however, Sagafi-nejad found that “[s]ixty-two percent of respondents experienced tensions or conflicts as practicing Quakers and lawyers” (p.174). She concludes that the “lawyers who appear to be the most content and comfortable . . . are those who have deliberately limited [their] cases to ones that were less likely to conflict with their Quaker faith” (id.). Sagafi-nejad suggests that truth-telling is at the heart of much of this tension, noting “how difficult it is to maintain a primary focus on truthfulness while practicing a profession that, more than occasionally nowadays, calls for the practitioner to engage in some dissimulation, chicanery, or outright deception” (p.156).

¶39 In response, the book’s final chapter (chapter 6) outlines comprehensive legal reforms that might help minimize the imbalance between zealous advocacy and truth-telling and equality. Throughout their history, Friends have taken to heart the scriptural admonition against “going to law” (p.178), developing instead alternative methods for resolving disputes. Sagafi-nejad examines this long Quaker

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15. 320 U.S. 81 (1943).
tradition of mediation and arbitration and submits that non-Quaker lawyers and clients could also benefit from increased use of such practices.

¶40 Friends at the Bar would make a valuable addition to the collections of academic law libraries, especially those with extensive holdings in the areas of religion and the law or legal reform. Though a relatively expensive purchase, Friends at the Bar is one of only a handful of monographs to address the Quakers’ relationship with the law.16 As such, it will enhance collections that include the other works and help fill in those that do not. In addition to the substantive content, patrons will appreciate the text’s extensive notes section, glossary, bibliography, and highly useful, thirteen-page index.


Reviewed by Matthew R. Steinke

¶41 Tongue-Tied America: Reviving the Art of Verbal Persuasion, from law professors Robert N. Sayler and Molly Bishop Shadel, opens with the basic premise that “[t]oo many Americans are ill-at-ease with public speaking” (p.1). Although the book was written largely with attorneys and law students in mind, its message extends well beyond the courtroom. Sayler and Shadel believe that competence with verbal persuasion is a critical life skill, important not only when giving presentations but for all manner of oral communication, both formal and informal. In Tongue-Tied America, they carefully explain the need for effective verbal persuasion and instruct readers from various backgrounds how to become more proficient in this skill.

¶42 The authors have written a comprehensive, yet compact, guide to persuasive rhetoric. The book first offers readers a foundation in classical principles of rhetoric and an introduction to various formats for speaking. The focus shifts in the book’s second part to the actual preparation and delivery of speeches. The third part applies principles developed in the preceding sections to real-world situations, addressing such topics as the use of persuasive rhetoric in the courtroom and the importance of rhetoric in presidential campaigns. In its final part, the book examines great historical speeches, including selections from Winston Churchill, Abraham Lincoln, Ronald Reagan, and Martin Luther King, Jr.

¶43 The use of illustrations drawn from contemporary and historical speeches is one of Tongue-Tied America’s principal strengths. In addition to the famous orations discussed in the final part of the book, the authors present familiar speeches throughout the text as examples of both good and bad rhetoric. For example, Sayler and Shadel praise the content of Senator John Kerry’s acceptance speech at the 2004 Democratic National Convention, but criticize its delivery: “The speech turned into a power struggle, with the audience trying to participate through applauding, and Senator Kerry plowing on ahead without waiting for them to catch up” (p.72). The

authors contrast this approach to Barack Obama’s masterful interaction with his audience during the “Yes We Can” speech delivered after his loss in the 2008 New Hampshire primary. Though President Obama’s rhetoric receives generally high marks from the authors, a June 15, 2010, Oval Office address on the BP oil spill is presented as a possible example of “stray[ing] too far from the inspirational epide-
tictic and into the pure, colorless, deliberative mode of speech” (p.34). Real-world examples such as these help bring life to the dry rhetorical principles that the authors discuss.

¶44 *Tongue-Tied America* is focused primarily on formal presentations, but the book also makes a compelling case for the importance of persuasive rhetoric in informal office interactions. The authors caution against becoming too reliant on written communication in today’s world of text messaging and e-mail. Regular use of verbal communication in the workplace can help limit misunderstandings, foster personal connections with coworkers and supervisors, and improve general presentation skills. Given these benefits, finding opportunities to practice the techniques of verbal persuasion should be an everyday exercise.

¶45 Throughout *Tongue-Tied America*, Sayler and Shadel employ a straightforward writing style that is easy to understand. Their book is also clearly organized; each of the four parts is separated into compact chapters and subparts. The main text is supplemented by four appendixes: a suggested curriculum for a public speaking course, a quick history of rhetoric, an analysis of the relationship between poverty and communication skills, and a set of suggestions for high school and college debate programs. Overall, the book makes for a quick and entertaining read.

¶46 As law professors at the University of Virginia, where they teach a variety of courses on oral advocacy and rhetoric, both Sayler and Shadel are well qualified to write this book; indeed, their expertise and passion for their subject are evident throughout the pages of *Tongue-Tied America*. However, the potential audience for the book is much broader than just the legal community. Relatively few of the book’s pages are devoted to oral communication within the confines of law practice. While legal professionals will certainly find the book helpful, the lessons offered by Sayler and Shadel should appeal to anyone seeking to become more comfortable with public speaking. Thus, *Tongue-Tied America* would be an excellent selection for all law school libraries, undergraduate academic libraries, and large public libraries.